IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.42 OF 2006

Mohan Mahal Flat Owners Co-op.
Hsg.Soc.Ltd. through
Arvind Sitaram Dandekar, Secretary ...Petitioner

Versus

The Thane Municipal Corpn. & Ors. ...Respondents

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Mr.A.Y.Sakhare, Sr.Counsel with Mr.Sagar A.Joshi for Petitioner.

Mr.R.S.Apte for Respondents 1 to 3.

Mr.D.A.Patil, A.G.P. for Respondent No.4.

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CORAM: A.M.KHANWILKAR, J.

MARCH 13, 2007.

P.C.

1. Heard Counsel for the parties.

2. Grievance in this Petition is about non-compliance of the direction contained in order dated 31st March 2004 given by the Division Bench of this Court in Public Interest Litigation No.90

of 2002. During the pendency of this Petition, the Corporation was expected to consider the new proposal submitted by the Petitioner on 5th July 2006. The Competent Authority of the Corporation has duly considered that proposal and has taken final decision on 3rd February 2007 after following necessary procedure. It is also not in dispute that the Petitioner has carried the matter in Appeal against the said decision.

3. In the light of these developments, in my opinion, no cause survives for precipitating the present Contempt Petition.

4. However, Counsel for the Petitioner would contend that the decision given by the Competent Authority is clearly in disregard of the spirit of the order passed by the Division Bench of this Court. It is submitted that the final conclusion reached is not in conformity with the requirement of Government Circular dated 4th October 1999.

5. The argument clearly overlooks that in terms of the observations made by the Division

Bench of this Court, the Competent Authority was required to consider the new proposal not only in terms of Notification dated October 4, 1999 but also in terms of State Government Notification dated July 28, 2003 which purported to clarify/modify the earlier Government Notification. The case of the Corporation is that the decision has been taken keeping in mind the modification suggested in the subsequent Government Notification dated July 28, 2003. That defence appears to be plausible.

6. The argument of the Petitioner that the State Government Notification dated July 28, 2003 would not permit the Corporation to take the view as has been taken, cannot be matter for consideration in the present Contempt Petition. Those issues will have to be addressed in the Appeal which is pending before the Appellate Authority.

7. Suffice it to observe that when two views are possible in respect of the decision, the contemnors will have to be given benefit of the

situation to hold that it is not a case of wilful disobedience of the order of the Court. Thus understood, this Petition cannot proceed further. Hence, dismissed. Show-cause notices issued to the contemnors stand discharged. All questions regarding the merits of the decision taken by the Competent Authority on the new proposal of the Petitioner will have to be considered on its own merits in accordance with law.

A.M.KHANWILKAR, J.